

**Testimony of the National Leased Housing Association**  
**Submitted for the Record**  
**Housing Affordability Hearing – May 3, 2001**  
**Committee on Financial Services**  
**Subcommittee on Housing & Community Opportunity**

The National Leased Housing Association (NLHA) is pleased to submit our views relating to housing affordability issues impacting the Section 8 programs. For the past thirty years, NLHA has represented the interests of developers, lenders, housing managers, housing agencies and others involved in providing federally assisted rental housing. Our members are primarily involved in the Section 8 housing programs – both project-based and tenant-based. NLHA's members provide housing assistance for nearly three million families.

NLHA's testimony will be limited to Section 8 issues relating to 1) voucher utilization; 2) preservation and 3) tax relief. We appreciate the opportunity to provide our views and look forward to working with the subcommittee on improving the housing opportunities for low and moderate income Americans.

**Voucher Utilization:** A critical component of any national housing policy is the Section 8 voucher program. Currently, over 1.5 million families are being served by this program. We encourage Congress to maintain funding for these families and to continue to increase the number of vouchers available each year.

We agree with congressional criticism that not all vouchers have been used and reforms need to be made to ensure that all vouchers are leased-up. However, we disagree with the scope of the problem. In FY2001, the congressional appropriators recaptured \$1.8 billion in Section 8 funds. Many believe that these funds were recaptured voucher authority. Not so. Of the \$1.8 billion, half of the funding was leftover Housing Assistance Payment (HAP) monies remaining in project-based Section 8 contracts that were not renewed.

The remaining \$981 million were voucher funds that included litigation vouchers, conversion vouchers and special population vouchers that are special to a PHA's voucher program and for various legitimate reasons can not be leased-up within one year. We estimate that underutilization of regular vouchers comprise less than \$350 million a year. Arguably, this is still unacceptable, but not as dire as has been portrayed.

NLHA has made a number of recommendations that we believe would improve voucher utilization in many communities (a paper submitted to HUD in 8/00 is attached). HUD has already taken one important step by allowing the increase in Fair Market Rents in some areas to be raised to the 50<sup>th</sup> percentile. We would urge Congress to expand this increase to all markets.

A second issue that plays a large role in preventing lease-up concerns the 40 percent cap. Currently, families that are receiving voucher assistance for the first time or are currently in the program, but wish to move to a new unit are not permitted to pay more than 40 percent of adjusted income for rent. NLHA supports a cap as a general rule, but believes flexibility is key to address extenuating circumstances.

The most obvious barrier to lease-up is the lack of available units. In a tight rental market, there is no incentive for landlords to rent to Section 8 voucher holders. A number of PHAs have been creative in finding ways to convince landlords to participate in the program, but when there is a tight supply, options are limited. Steps need to be taken in such areas to increase the supply of affordable units. Congress made a giant step forward in October by recognizing the flexibility of project-based vouchers and has made a number of statutory changes to the program to make it more user-friendly. A set of recommendations NLHA prepared for HUD is attached that outlines both legislative and regulatory changes that would ensure the successful use of project-based vouchers.

**Preservation of Assisted Housing:** By enacting the "mark up to market" provisions of MAHRAA in 1999, Congress has ensured the preservation of thousand of units of project-based Section 8. However, there are owners who are choosing to opt-out of the program rather than be subject to HUD rules and the administrative headaches associated with operating a government program. Further, for a number of ownership entities, conversion to market rate means relief from rules concerning limitations on distributions. In other words, some Section 8 projects may only distribute cash up to 6 or 10 percent of initial equity – a restriction that disappears when the Section 8 contract is not renewed. HUD has provided relief to owners who mark up to market, but other owners who voluntarily reduce their rents to market remain subject to the distribution limitations. A situation that will certainly contribute to additional opt-outs. We urge this subcommittee to encourage HUD to expand the relief from income distribution limitations to all properties who remain in the program.

**Exit Tax Relief:** Any comprehensive proposal to preserve the affordability of the low income housing stock must include provisions to address the tax implications facing the current owners upon transfer of the property. Under the current tax laws, a transfer of the property triggers a capital gains tax of 25 percent on both cash and non-cash gain (non-

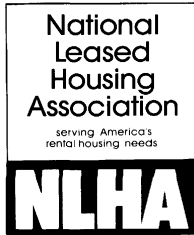
cash gain is due to depreciation). We believe many nonprofit and for-profit entities would be interested in buying existing Section 8 properties and would agree to maintain affordability for up to thirty years. However, the investors/owners will only agree to the transfer of the properties if the sale proceeds will cover their non-cash tax liabilities. It is the rare housing transaction that can generate sufficient funds to reimburse investors for the “exit” taxes. Hence, most investors will not agree to the sale, and a long-term preservation opportunity is lost.

A relief of the non-cash gain associated with the sale of HUD subsidized or insured multifamily properties would go a long way to facilitate the transfer of these properties for long-term preservation as affordable housing. Further, the Treasury would benefit from the revenue on tax payments based on any cash gain generated by the sale (money that the Treasury would not otherwise realize absent a property transfer). Keep in mind, that if the investor/owners retain the property until their estate is activated, the Treasury does not receive any revenue as the new owner receives a full step up in basis.

NLHA recognizes that tax law is not under the jurisdiction of this subcommittee, but considering the importance of such tax law on housing preservation, we urge your support.

NLHA remains committed to maximizing housing affordability and stands ready to assist the subcommittee in its work. Thank you for the opportunity to present testimony.

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## **NLHA Comments on Project-Based Voucher Program**

The National Leased Housing Association (NLHA) is comprised of both public and private sector housing organizations and agencies engaged in the provision of affordable rental housing. We have significant experience with the Section 8 programs and are quite interested in the recent legislative initiative to improve the use of project-based vouchers. We agree that use of the program has been limited due to burdensome regulatory requirements and statutory limitations. The program changes outlined in the January 16, 2001 Notice represent a good faith effort but fall short in a number of respects. The following comments include recommendations for both statutory and regulatory relief critical to the success of the program.

### **Regulatory Changes**

We applaud HUD for its effort to revise the project-based program regulations to facilitate the successful use of the program and offer the following recommendations:

**PHA Flexibility:** The current regulations impose numerous unnecessary and burdensome administrative requirements on PHAs that choose to utilize their statutory authority to project-base vouchers. PHAs should be able to outline plans for using project-based vouchers, including application requirements and selection criteria as an addendum to the PHA plan. The specific content of the written selection policy, the form of program advertisement, etc., should not be prescribed by HUD. HUD should set general parameters and lePHAs develop and implement the program based upon those parameters.

Further, relief from the project-based voucher competition requirements should be granted when the project has already received tax credits or bond financing as the projects have already gone through a competition process. HUD should also eliminate the requirement that it approve each housing site. The PHA is qualified to make a proper site selection. Seeking HUD approval

delays the confirmation of a financing commitment. In addition, new construction and rehab projects should not be subject to the site and neighborhood standards. To do so inhibits PHA's ability to use project-based vouchers to facilitate revitalization efforts (e.g. HOPE VI redevelopment).

Section 236 Projects The current regs prohibit the use of project-based vouchers in projects that were formerly insured under the Section 236 program. This prohibition should not apply.

Rehab Standard: The \$1000 per unit rehab standard is inadequate. The minimum rehab standard should be increased to \$10,000. Anything less than that should meet the definition of existing housing.

Tax Credit Units: The January 16 notice appears to say that for tax credit rents outside of qualified census tracts, the rent for a project-based voucher unit may not exceed the tax credit rent, even if the tax credit rent is less than the maximum voucher payment standard. We believe that the statute provides that the tax credit rent may be an exception to a rent set at the maximum voucher payment standard, therefore a PHA may set the rent at the ~~the~~ higher of the maximum voucher payment standard or the rent charged in tax credit units without rental assistance (for tax credit developments outside of qualified census tracts). For HUD to interpret the statute otherwise would mean that the rent for a unit with project based voucher assistance in a tax credit building in a poor neighborhood could be higher than the rent permitted in a tax credit development in a better-off neighborhood. Certainly HUD does not intend for this result. The regulations should be modified accordingly.

### **Legislative Changes**

Many of the concerns with the project-based voucher program will need amendments to the current statute. Paragraph (13) of section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(13)) is amended as follows:

Limitation on Project-based voucher units: Subparagraph (D) which limits project-basing to twenty-five percent (25%) of the units in any building except for single family properties and properties for the elderly, persons with disabilities or families receiving supportive services should be repealed.

Term of Assistance: Current HUD policy permits Section 8 contracts to be renewed under the project-based program for up to 20 years (subject to annual appropriations). The project-based voucher program should be no different. Subparagraph (F) (which would become subparagraph (E)) should be amended to increase the housing assistance payments contract term from 10 years to 20 years.

FHA Financing: A new subparagraph (F) should be added that for purposes of underwriting a loan insured under the National Housing Act, the Secretary may assume that any section 8 rental assistance contract relating to a project will be renewed for the term of such loan.

Maximum Rents: Subsidy determination in the project-based voucher program should be consistent with the “voucher” program. The law (we think mistakenly) sets rents at 110 percent of the FMRs and limits recipients rent to thirty percent of income. Subparagraph (H) should be amended to provide that the maximum rents for each unit assisted should not exceed 110% of the applicable payment standard, or such other level as determined reasonable by the PHA.

Rent Adjustments: Subparagraph I should be amended to provide that rents may be adjusted by the annual HUD published annual adjustment factor and in subparagraph ~~II~~(i) the phrase “and may not exceed the maximum rent permitted under subparagraph (H)” should be deleted.

Waiting List: Subparagraph (J) should be amended in the first sentence to provide that selection of families should be the responsibility of the owner and shall be from a waiting list maintained by the Owner in accordance with applicable HUD requirements. Subparagraph (J) should be further amended in the second sentence to provide that projects ~~will~~ not be subject to the provision of section 16(b) applicable to tenant-based assistance. Or, in the alternative, that such projects shall be subject to the targeting requirements applicable to public housing as provided in section 16(a)(2)(A) of the Act, i.e., not less than forty percent (40%) of the units in the project must be made available to families whose incomes at the time of commencement of occupancy do not exceed thirty percent (30%) of area median income, as determined by the Secretary with adjustments for smaller and larger families.

Davis-Bacon: A new subparagraph (L) should be added that provides that section 12(a) of the Act (concerning Davis-Bacon Act requirements) should not be applicable to projects with less than 50 units. The current exemption for section 8 is only for 8 or fewer units

Portability: Introducing the concept of portability into a project-based program raises concerns that tenants may move into a project only to move out of the project a year later (in effect jumping the waiting list). This is unfair to tenants who are higher up on the waiting list. This provision should be eliminated.

## **VOUCHER UTILIZATION RECOMMENDATIONS**

### **SUBMITTED BY THE NATIONAL LEASED HOUSING ASSOCIATION**

PHAs see full utilization of program resources as a fundamental program and organizational goal. However, in striving to maximize the use of program resources, PHAs encounter several programmatic and financial obstacles that impede their efforts. We have categorized these issues into five categories — the need for increased PHA flexibility, FMR and payment standards, the cost of lease up, other statutory and regulatory changes, and training. The following is a summary of the issues the task force identified as suggestions to minimize obstacles and maximize the use of resources.

#### **INCREASED FLEXIBILITY**

**1. To facilitate successful leasing and to encourage participation by owners, we believe that HUD should permit PHAs to start housing assistance payments to owners of properties that have only minor HQS violations.**

In the Section 8 program, assistance contracts may not begin until the PHA has certified that the property owner has corrected all HQS deficiencies. When the HQS deficiency is minor and does not threaten the family's safety or security, many landlords see the subsequent delay in renting the unit as unnecessary and bureaucratic. PHAs and program participants would be more successful if the PHA had the authority to start the housing assistance contract immediately after the first inspection if the only HQS violations are minor. Of course, the owner must agree to make corrections within a 30-day period. In this scenario, the PHA would still follow through with a reinspection and would apply existing non-compliance remedies if the landlord failed to complete the repairs.

The way the voucher program is currently structured, newly leasing families are treated differently than a family whose unit is undergoing an annual inspection. If the PHA finds a non life-threatening HQS deficiency during the annual HQS inspection of a property already on the program, the PHA continues subsidy payments for thirty days. This gives the landlord a reasonable amount of time to make the repairs. However, for new families, the PHA may not begin subsidy payments until the unit is free of all HQS deficiencies. Some HQS deficiencies are minor and easily corrected. Delaying rent payment until such repairs are completed limits the number of owners willing to participate in the program, makes the PHA seem intractable and bureaucratic and further limits the families' choice of units.

**2. Allow PHAs to use relocation, litigation, and other special purpose vouchers on an interim basis to provide housing assistance to other families.**

HUD may assign new voucher units to specific PHAs for relocating public housing residents or for litigation purposes. Current rules prohibit the PHAs receiving these special allocations from issuing the new vouchers until the families affected by the demolition/disposition, modernization, or litigation need the relocation assistance. In some cases, years have passed between the time HUD dispersed the special allocations and the time the rules permitted the PHAs to use the assistance. A better approach would be to allow PHAs to use the vouchers on an interim basis to provide housing assistance to other families. Of course, affected PHAs would have to show that they would have the resources to assist the targeted families when the time comes.

**3. HUD should establish longer lease-up periods for PHAs receiving vouchers for special programs or special populations.**

Frequently, the additional demands for leasing targeted populations require more time than leasing the non-targeted families. PHAs and the families need additional time for conducting special procedures such as targeted outreach, coordination with service providers, working with families toward meeting the prerequisite milestones, and finding accessible units. HUD should extend the leasing periods to at least eighteen months or preferably to two years.

**FMR AND PAYMENT STANDARD**

**The task force encourages HUD to advocate for an increase in the FMR to the 50<sup>th</sup> percentile.**

Under the current 40th percentile rule for FMRs, many voucher families fail to find any rental units that have rent and utility costs low enough to lease under the program (even when the PHA has used its flexibility to establish payment standards above the FMR.) In some communities, voucher families are able to find a limited selection of units, but only in high poverty areas where the rents are lower than the average rent for the area.

In addition, the rent cap, set at 40 percent of the family's adjusted income, limits the amount over the payment standard the family is permitted to pay. In the best scenario, these two factors combine to significantly reduce the number of rental units available to voucher families. In the worst, but all too common circumstances, families are unable to find qualifying units and must turn their vouchers back in to the PHA.

**1. The NLHA task force would like to see HUD give local HUD field offices the authority to grant exception rents.**

PHAs need greater flexibility to set the payment standards higher. One way to accomplish this is by authorizing the local HUD field offices to grant higher exception rents — up to 150 percent of the FMR.

**2. Given rising utility costs in many parts of the country, we suggest that HUD adjust the FMRs semi-annually in areas that are experiencing rapid increases in utility costs.**



According to our members, utility costs are increasing dramatically. These increases further exacerbate the too-low FMR problem. Since the FMR is supposed to support both rent and utilities for voucher families, increasing utility costs require even lower rents. This makes fewer and fewer rentals available forcing many voucher holders to simply give up their search for housing. The impact on families is devastating. In many cases, they have waited a very long time to receive housing assistance. However, for many families, the wait is futile. After finally receiving their long-sought voucher, they are unable to find affordable housing and must forfeit their opportunity for rental assistance. This scenario also negatively affects PHAs by lowering the housing authority's lease rate.

## **COST OF LEASE-UP**

### **1. Create or expand programs such as the Regional Opportunities Counseling program (ROC).**

Funding for counseling programs provides tenants with a broad range of services including housing search assistance, landlord outreach, referrals to self-sufficiency and other supporting services, and post lease-up assistance. This type of support is especially important to families moving from high to low poverty areas.

Counseling programs have been shown to improve the PHA's lease-up rate by improving the family's chances of successfully finding and leasing a unit. In Boston, for example, the ROC program participants had a lease rate of 85 percent compared to 50 percent for those not receiving help. Similarly, the Metropolitan Council of Minneapolis' lease-up rate for families participating in this type of supportive program rose to 70 percent. Families without such assistance had a 15 percent success rate for finding and leasing units. The positive impact and return from investing in such programs is evident

### **2. PHAs would like the option to use a small fraction of HAP funds to help voucher holders with move-in deposits and fees.**

In some jurisdictions, applicants fail to lease units because they cannot afford the up-front costs. Such costs may include fees, security deposits, and first and last months' rent deposits. PHAs could turn unsuccessful housing searches into successful housing searches (and potentially shorten the time successful families look for dwellings) if HUD permitted PHAs to use a small percentage of their HAP funds to help families defray these costs.

### **3. We recommend that HUD provide funds to PHAs to defray the costs of leasing new families.**

We would like to see HUD provide funding for each new family leased in the program, whether the voucher is an existing turn-over voucher or one received through a new allocation. Leasing-up a family new to the program is an expensive process. Legislation and regulations have increased PHA responsibilities and administrative tasks while at the same time diminishing overall funding. The new tasks are complex and time-consuming. For example, newer responsibilities require PHAs to add citizenship eligibility and certain criminal history background checks to the already-lengthy applicant screening process. Additionally, PHAs must now verify that the rent for the dwelling unit that a family wants to lease does not exceed a percentage of the family's adjusted income.

For many PHAs, new assistance is a mixed blessing. It provides additional resources for housing more families. However, it does not provide the necessary supporting funding to help the PHA conduct the tasks and provide the services necessary to bring the families onto the program. In some cases, the effort is a zero sum proposition for the PHA — costing more just to lease one family than it does to continuously assist families already on the program.

In some cases, a PHA that previously issued two vouchers to see one family successfully lease must now process and issue three or four vouchers before a family successfully leases. This puts a greater and greater administrative cost and burden on the PHA. The harder it is for families to find units, the higher the failure rate among new voucher holders. The higher the failure rate, the harder the PHA must work to achieve a reasonable lease rate. Consequently, the cost for leasing each family gets even greater.

**4. PHAs need additional resources to implement special initiatives requiring extensive coordination with social service agencies, such as welfare to work, mainstream, and family unification. To help families with special needs succeed in finding and renting appropriate housing in increasingly more difficult leasing environments, PHAs need additional resources.**

**5. The task force suggests as an alternative to the lease up fee (for families new to the program), that HUD work with PHAs to establish a Voucher Success Fund.**

The Voucher Success Fund would be a pool of funds that individual PHAs could tap to meet certain challenges to successfully leasing families. For example, one PHA might need to offer special counseling to non-English speaking families. The voucher Success Fund could provide the resources to assist the PHA with the additional costs such counseling would require. Another PHA, in a tight rental market, might need funds to help voucher families by providing security deposit loans or grants.

## **OTHER STATUTORY OR REGULATION CHANGES**

**PHAs should have waiver authority to adjust the 40 percent cap for certain families.**

The 40 percent cap (restricting a family's search to only those units where the combined cost of rent and utilities does not exceed 40% of the family's adjusted monthly income) makes it extremely difficult for some families to find appropriate units. PHAs need the flexibility to waive or raise the cap under limited circumstances (for reasonable accommodation, uncounted income) or have a ready access to timely waiver authority. The cap especially affects a large number of elderly families.

**1. Revise the project-based voucher regulations to (a) streamline the process; (b) allow owners rather than the PHA to maintain the waiting list; (c) eliminate the requirement for Davis-Bacon wage rates; (d) enable owners to receive rent increases that are more in line with market increases; and (e) provide for a five year ACC to make it possible for owners to find willing lenders.**

**2. The task force also recommends that HUD provide relief to Section 8 landlords from lead-based paint requirements (becoming effective September 15, 2000).**

PHAs cannot keep landlords in the program when the burden on Section 8 landlords is so much greater than on non-Section 8 landlords. Without the participation of the landlords who own and manage affordable units, voucher families will be unable to find suitable affordable housing. We believe the current HQS requirements are effective in protecting children for lead poisoning and that the additional requirements imposed by Subpart M of the September 15, 1999 rule are overkill and will alienate landlords. Further, the tenant-based provision of the rule were not contemplated in the proposed rule and therefore deprived the public from an adequate comment period. At the very least, we believe HUD should provide free, broadly accessible training sessions open to all PHAs and owners. In addition, PHAs and owners need HUD to assist them in identifying fast and inexpensive dust analysis resources and provide the funding for the clearance tests. Implementation of the rule should be phased in according to the age of the unit as provided for project-based Section 8 and deferrals should be granted when lack of capacity is demonstrated.

### **3. Reduce the size and scope of the requirements for PHA plans (Section 8)**

Many PHAs report that the plans are not more useful than previous procedures; yet putting the plans together is very time-consuming, particularly in terms of public notification and comment.

### **4. We suggest that HUD exempt elderly and disabled families from rent increases resulting from the conversion from the certificate program to the voucher program — in the same way that enhanced voucher participants are protected.**

Rents that the PHA approved under the certificate program rules may become too costly for certain families (especially elderly and disabled families) when the PHA changes their assistance to the voucher program. In some cases, a certificate family may have resided in the same rental unit for many years. During that time, the PHA could have granted rent increases — in line with the certificate program's annual adjustment factors and rent reasonableness rules — that gradually raised the rent beyond the current FMR.

When the PHA converts the certificate contract to a voucher contract, the resulting family share of the rent may be above the payment standard. In these instances, the conversion means the family must pay a higher share of the rent for the same unit. The family share of the rent frequently increases beyond what the family can afford forcing the family to move to another unit. (PHAs report that rent increases of \$150 per month are common.)

## **TRAINING**

**Given the number of changes that have taken place in the housing programs and the resulting complexity of administering the programs, we believe HUD should conduct training and provide tools to help PHAs understand and utilize the options that are available to them.**

Over the last couple of years, PHAs have seen an enormous number of statutory and regulatory changes to the Section 8 programs — some of them very complex and time-consuming to adopt. For many agencies, just keeping up with the day-to-day changes in program operation has been overwhelming. We suspect that a significant number of PHAs are unaware of many of the finer points of the new rules.

For example, it used to be that a PHA could assist a greater number of families if it kept the payment standards as low as possible. However, under current funding methods, the lower payment standard this year will translate into a lower funding for renewals next year. By managing the program using out-dated assumptions, some PHAs may be missing opportunities to design better functioning programs that serve larger numbers of families.

Many PHAs still do not understand the complexities and relationship between funding and lease up. They do not understand that they may temporarily lease more units than authorized by their ACC. They are unaware that they may use reserves to fund units when their average costs are greater than the average funding available per unit. We believe HUD should conduct better outreach and training to help PHAs understand and utilize the options that are available to them. We suggest HUD create a lease up guidebook with separate sections for the executive, the financial manager, and the lease up manager. The book should also include easy to use and understand worksheets to assist the PHA to determine their optimum lease-up count and a methodology for tracking funding throughout their fiscal year.